

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 60 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANKAJKUMAR P SUTARIYA

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for Petitioner
MR MA BUKHARI APP for Respondent No. 1
MR CB DASTOOR for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 06/10/97

ORAL JUDGEMENT

Respondent No.2 was facing trial for offences under sections 66(b) and 85 (1) (3) of the Bombay Prohibition Act, 1949. The alleged offence had taken place on 29.12.1993 which resulted into Criminal Case No.382 of 1994. It being a case under the said Act it was being tried summarily for which one has to look at Chapter XXI of the Criminal Procedure Code Sections 260 to 265.

However, for our purpose, what is material is the provisions of Section 262 i.e., the procedure to be followed for summary cases is that of trial of summons cases except for imposition of sentence. Quantum thereof is specified in sub-section (2).

In this background, the subsequent development in the said case before the trial court is to be considered. The trial court was approached by the accused/respondent No.2 with a prayer that he be given the benefit of the Supreme Court judgment given in 'common causes' cases. First judgment came to be delivered in Writ Petition (Civil) No. 1128/96 on 1.5.1996. This is a case circulated in almost all journals and I am referring to the report as contained in 1997 (1) GLH 417. Soon thereafter when the trial court was approached it by order dated 21.6.1996 closed the case and acquitted the accused.

The original complainant moved the matter before the learned Sessions Judge, Jamnagar by way of Revision Application No. 95/96. Pleading in favour of the accused/respondent so far as the application of the said judgment is concerned, adding to it one more ground i.e., locus standi of the original complainant in a matter arising out of a police report, the revision application was dismissed on 1.10.1996.

The Honourable Supreme Court thereafter came out with a clarificatory order in the said common causes judgment on 28.11.1996 in that very proceeding. In fairness to the courts below that it must be stated that what they did was pursuant to the earlier order where in absence of clarification the interpretation put by them was certainly called for.

However, now the period of commencement of trial has been quantified and defined in the clarificatory judgment which has been reported in 1997 (1) GLH 420.

The effect of the clarification is that unless plea is recorded in the cases like the present one, the trial could not be said to have commenced. If the trial has not commenced, there is no question of giving the benefit of the said common causes judgment to the accused of such cases. Only on this short point the present application is required to be allowed. This is not to say that the view taken by the learned Additional Sessions Judge in the revision application No. 95/96 as per his order dated 1.10.1996 with regard to locus standi of the petitioner is not correct.

However, this court under Article 226 and in cases under Article 227 also when is appraised of what turns out to be eventually an illegal order it can own its own take up the matter and set the wrong right. In the instant case the petitioner has moved this application and, therefore, by agreeing with the learned Sessions Judge that he may not have the locus standi, having come to know about the illegality particularly having reference to the subsequent judgment, this court will certainly interfere.

The judgment of the Supreme Court under Article 141 are law of the land and any order of any court contrary to the judgment of the Supreme Court is certainly be illegal. It is the duty of this court to correct the illegality. It is exactly what is being done by this order.

The present application is, therefore, allowed. Order of the courts below are set aside. Criminal Case No. 382 of 1994 shall stand restored at the stage where it was before by the trial court. The respondent No.2 shall remain present before the trial court on or before 20.10.1997 failing which the trial court shall issue warrant bailable or non-bailable as may be thought fit by the learned Magistrate and proceed further with the matter.

It is definitely on record that plea has so far not taken and the learned Judicial Magistrate, First Class, shall proceed to record the plea and proceed with the trial as early as possible.

Rule is, therefore, made absolute accordingly.